IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 22.08.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Habeas Corpus Petition No.685 of 2006

P.Ravichandran ... Petitioner

Vs.

State by
The Deputy Superintendent of Police,
'Q' Branch C.I.D.,
Cuddalore. ... Respondent

Petition under Article 226 of the Constitution of India for the issuance of a writ of habeas corpus directing the respondent to produce detenu Peter alias John Peter, son of Pichamuthu, concerned in CC No.9 of 1994 (on the file of the Designated Court-II, Chennai) before Court and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr. M.Babu Muthu Meeran,
Additional Public Prosecutor.

O R D E R

P.SATHASIVAM, J.

One Ramachandran, friend of the detenu/co-accused, has filed this Habeas Corpus Petition, seeking for a direction to the respondent-Deputy Superintendent of Police, 'Q' Branch, CID, Cuddalore, to produce detenu Peter @ John Peter, son of Pichamuthu, concerned in C.C. No.9 of 1994 on the file of the Designated Court-II under TADA (P) Act, 1987, Chennai, and set him at liberty.

2. Brief facts are stated hereunder:-

According to the petitioner, detenu/co-accused Peter @ John Peter concerned in C.C. No.9 of 1994 on the file of the Designated Court-II under TADA (P) Act, Chennai, was arrested on 19.11.2000 and remanded to judicial custody, however, he is kept in

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Jail for over five years. Other co-accused by name Kalai @ Ravichandaran and Punniamurthy @ Varatharajan were enlarged on bail by Designated Court-II, Chennai, yet, detenu John Peter was discriminated and his remand was extended mechanically from time to time without application of mind. Further, similarly placed co-accused were already released on bail.

The Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as TADA Act) is dead and mechanical remand under the dead law is illegal. Further, the State of Tamil Nadu passed G.O.Ms.No.1180, Home, dated 31.12.1996, withdrawing TADA prosecution against all TADA Prisoners except the persons connected with the Liberation Tigers of Tamil Elam (shortly called LTTE). According to the petitioner, the case relating to the detenu comes under the domain of 'law and order problem' arising from retaliatory murder as Kullanchavadi Police personnel murdered two villagers and to take revenge therefor, Kullanchavadi Police Station was alleged to have been attacked, whereupon, the police fired at the mob and, in that mob fury, one constable was found dead. The bomb blast case arising from the said incident could be tackled under normal law as evolved by the Government of Tamil Nadu in G.O. Ms. No.1180 of 1996 dated 31.12.1996.

The prolonged custody over five years is oppressive, unjust, illegal and violative of Article 21 of the Constitution of India. The case in C.C. No.9 of 1994 is only an outcome of a revenge murder as the Kullanchavadi Policemen killed two villagers while they were in custody; hence, TADA is not attracted. Further, the detenu has turned to a new leaf and he filed an affidavit along with his wife Johnsi stating that he has no connection whatsoever with any organization much less Tamil Nadu Liberation Army (in short TNLA).

3. The respondent/Deputy Superintendent of Police filed a counter affidavit, wherein, it is stated that detenu/accused Peter @ John Peter concerned in C.C. No.9 of 1994 on the file of Designated Court-II under TADA Act was arrested on 20.11.2000. Since he was absconding from the date of occurrence, the Designated Court-II passed an order for proclamation. Though co-accused was released on bail, at the time of release, the trial in the above case was not commenced. But, in the above case, the prosecution examined 58 witnesses and closed their side on 04.10.2005 itself. The defence did not take any effective steps in spite of allowing of the recall petition to cross examine more than 44 witnesses including 6 eyewitnesses so far.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

As per the direction of the Supreme Court in Karthar Singh's case (reported in 1994 SCC Crl. 899), the State Government constituted a review committee and all the pending cases were reviewed and the Government issued Government Order-1 (D) No.1180 dated 31.12.1996 and the cases wherein the accused are not the supporters/sympathisers of Liberation Tigers of Tamil Elam were ordered to be transferred to the regular court. Except the cases in C.C. No.6/94 (Villupuram Town Police Station Crime No.50/93) and C.C. No.9/94 (Kullanchavadi Police Station Crime Number 346/93), the TADA Act offence cases were withdrawn. The act of the petitioner and other accused clearly attracted the offences under Sections 3, 4 and 5 of the TADA Act, 1987, and they are the active members of the Tamil Nadu Liberation Army and also the supporters/sympathisers of Liberation Tigers of Tamil Elam. The hand written pamphlets and printed pamphlets recovered from the scene of crimes at Villupuram Municipal Office Gandhi Statue at Athur and at Kudavasal Congress Office clearly disclosed that the petitioner and others are the supporters of the LTTE. Even after expiry of the TADA Act, as per the Saving Clause, the cases relating to the petitioner and others could be proceeded as if the said Act did not expire. Earlier petition filed by the petitioner and other accused were dismissed by this Court. There is ample evidence against detenu John Peter, more over, the prosecution closed their side and the accused can very well agitate before Designated Court-II and get rid of the case. Even otherwise, the accused is in judicial custody and not in illegal custody; hence, he is not entitled to the relief prayed for in this Petition.

4. Heard Mr.R.Sankarasubbu, learned counsel for the petitioner and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor.

5. It is seen from the materials furnished by the respondent that, as per the direction of the Supreme Court in Karthar Singh's Case, the State Government constituted a Review Committee, whereupon, all pending cases were reviewed and consequently, the Government had issued Government Order 1(D) No.1180 dated 31.12.1996. A perusal of the said Government Order shows that except C.C. Nos.6/94 and 9/94 all other cases have been transferred to regular court.

6. It is not in dispute that the detenu is one of the accused in C.C. No.9 of 1994. The respondent has reiterated in the counter affidavit that the act of the petitioner and other accused clearly attracted the offences under Section 3, 4 and 5 of the TADA (P) Act, 1987 and that the petitioner and other accused are active members of TNLA and supporters/sympathizers of LTTE. It is also the definite case of the State that the petitioner along

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

with other accused, two days prior to 14.11.1993, at Vadalore Sabai, entered into a criminal conspiracy and designed to commit illegal acts by illegal means with the common object of fighting for an independent Tamil Nation by secession of Tamil Nadu from Indian Union by armed revolution using explosives, arms and ammunition. In pursuance of such criminal conspiracy, on 16.11.1993, deceased Lenin and other accused unlawfully assembled at Jacob Motor Shed and conjointly prepared 25 country bombs and, on 18.11.1993, the accused/detenu and others unlawfully assembled with the common object of committing riot and murder and, armed with country bombs, they criminally trespassed into Kullanchavadi police station in order to create terror in the minds of the people and threw 21 country bombs within the vicinity, out of which, 20 exploded, resulting in the death of police constable Thillaigovindan, who was on duty, and causing grievous injuries to other three constables, who were present in the police station. Therefore, the unruly activities of the petitioner and other accused, which resulted in the brutal killing of an innocent police man using such terrorism by hurling country bombs, clearly attract the provisions of the TADA (P) Act, 1987.

7. Though Mr.R.Sankarasubbu has relied on several decisions, we are of the view that reference to the ruling of the Supreme Court in Shaheen Welfare Association vs. Union of India and others (1996 SCC (Cri) 366) alone is sufficient for disposal of the above petition. While considering pendency of several cases under TADA or some other special enactment and observing that several persons are languishing in jail awaiting trial, the Hon'ble Supreme Court has categorized the undertrial prisoners into four classes and issued certain directions/guidelines for grant of bail. Relevant portion in the said Ruling is extracted below:-

> " 13. For the purpose of grant of bail to TADA detenus, we divide the undertrials into three (sic four) classes, namely, (a) hardcore undertrials whose release would prejudice the prosecution case and whose liberty may prove to be a menace to society in general and to the complainant and prosecution witnesses in particular; (b) other undertrials whose overt acts or involvement directly attract Sections 3 and/or 4 of the TADA Act; (c) undertrials who are roped in, not because of any activity directly attracting Sections 3 and 4, but by virtue of Section 120-B or 147, IPC, and; (d) those undertrials who were found possessing incriminating articles in notified areas and are booked under Section 5 of TADA.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

> 14. Ordinarily, it is true that the provisions of Sections 20(8) and 20(9) of TADA would apply to all the aforesaid classes. But while adopting a pragmatic and just approach, no one can dispute the fact that all of them cannot be dealt with by the same yardstick. Different approaches would be justified on the basis of the gravity of the charges. Adopting this approach we are of the opinion that undertrials falling within group (a) cannot receive liberal treatment. Cases of undertrials falling in group (b) would have to be differently dealt with, in that, if they have been in prison for five years or more and their trial is not likely to be completed within the next six months, they can be released on bail unless the court comes to the conclusion that their antecedents are such that releasing them may be harmful to the lives of the complainant, the family members of the complainant, or witnesses. Cases of undertrials falling in groups (c) and (d) can be dealt with leniently and they can be released if they have been in jail for three years and two years respectively. … "

8. If the detenu comes under categories (c) and (d), there will not be any difficultly in considering his case. However, according to the respondent, apart from his involvement in C.C. No.9 of 1994 (Kullanchavadi Police Station Crime Number 346/93), the detenu also involved in Chengalpattu Railway Police Station Crime Number 50/96 under Sections 447, 427, 353 IPC. read with Section 5(3) of the Indian Explosive Substances Act read with Section 151 of the Indian Railways Act; and Andimadam Police Station Crime Number 234 of 1997 under Sections 147, 148, 448, 427, 323, 397, 307, 342, 332, 341 read with 25 (1)(B)(a) and Section 27 of the Indian Arms Act, 1957; and both the cases are pending trial before the Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee at Chennai.

9. On going through the above details, we are of the view that undoubtedly the detenu cannot claim that his case falls either under clause 'c' or 'd'. Accordingly, the arguments based on Shaheen Welfare Association's case cannot be accepted.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

10. We have already referred to the stand of the respondent that the prosecution closed their side by examining 58 witnesses, producing 80 M.Os. and marking 114 Exhibits. It is also brought to our notice that the last witness was examined on 26.09.2005. It was demonstrated before us that the defence is taking time under one pretext or the other. In fact, even after allowing the petition under Section 311 Cr.P.C., it is the grievance of the respondent/investigating agency that the defence has not taken any step for completion of the trial. It is not in dispute that, while considering cases involving similar aspects, this court dismissed similar habeas corpus petitions [vide HCP Nos.1488 to 1490/03 Order dated 04.03.2004; HCP Nos.539, 541, 543, & 544 of 2004, dt.13.08.2004; HCP Nos.1193 and 1194 of 2004, dt.06.12.2004; HCP Nos.526 & 572 of 2005, dt.07.07.2005; and HCP No.479 of 2006, dt.30.06.2006].

11. In addition to the above information, it is also brought to our notice that one of the co-accused by name Murugesan, who was released on bail, was absconding and he was declared as proclaimed offender. Likewise, one Kalai @ Ravichandran, who was also released on bail, is not complying with the conditions and his whereabouts are not known.

12. Though Mr.Sankarasubbu heavily relied on the earlier order passed in HCP No.443 of 2003, dated 24.04.2003, as rightly distinguished in HCP Nos.1193 and 1194 of 2004, dated 06.12.2004, the custody of the detenu cannot be termed as illegal when he is in judicial custody on the basis of valid order of remand. Inasmuch as the prosecution has closed their side even as early as on 04.10.2005 and C.C. No.9 of 1994 is pending, and taking note of the fact that only the defence is not evincing any interest in cross examining the prosecution witnesses, we are not inclined to accept the argument of the learned counsel for the petitioner. The Designated Judge rightly considered all the relevant aspects and dismissed his bail application. Admittedly, no appeal has been filed against the said order. Though it is argued that the said order is under challenge in the present HCP, in view of our conclusion and in the light of the reasons adduced by the designated Judge, we are satisfied that the petitioner has not made out a case for granting any relief at this juncture, instead, it is for the detenu and other accused to co-operate for completion of the trial at the earliest point of time.

13. As observed in our earlier orders, the Designated Judge is directed to take all efforts for early completion of the trial.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

We do not find any merit in the claim made by the petitioner. Accordingly, the Habeas Corpus Petition fails and the same is dismissed.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Deputy Superintendent of Police, 'Q' Branch, C.I.D., Cuddalore.

2. The Presiding Judge,
the Designated Court-II,
Under TADA (P) Act 1987,
City Civil Court
Chennai 104

3. The Public Prosecutor,
High Court, Madras.

Order
In HCP No.685/2006.

TEJ(CO)
SR/30.8.2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/